

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION NO.103 OF 2013
IN
WRIT PETITION NO.3896 OF 2011

Shri Sushil Kashmirilal Agarwal] Petitioner

Vs.

Deputy Director Town Planning &]

Development Dept. & Ors.] Respondents

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Mr. A.Y. Sakhare, Sr. Advocate i/b Shri U.B. Nighot, for Review Petitioner.
Mr. Deepak R. More, for respondents No.1 and 2.

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**CORAM : R.M. SAVANT &
R.G. KETKAR, JJ.**

DATE : 26TH APRIL, 2018.

P.C.

Heard Mr. Sakhare, learned Senior Counsel for the petitioner and Mr. More, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Section 114 read with Order-XLVII, Rule-1 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the petitioner has sought review of the order dated 25th July, 2011 passed by this Court (Coram: D.K. Deshmukh and R.G. Ketkar, JJ) in Writ Petition No. 3896 of 2011. The petitioner has instituted Writ Petition No.3896 of 2011, *inter alia*, praying for following reliefs;

- (a) The records and proceedings in respect of in respect of allotment of Development Right Certificate dated 1.9.2008 by the Respondent Nos. 1 and 2 on 1.12.2009 of said land i.e

lands bearing survey No.144/5 to 144/10 situated at village Pimpri Waghire, Taluka – Haveli, District- Pune surrender by Petitioner to Pimpri Chinchwad Municipal Corporation be kindly called for.

- (b) On perusal of the same this Honourable Court by an appropriate writ, order and/or direction be pleased to direct the Respondents Nos.1 and 2 to forthwith allot to the Petitioner the Development Right Certificate of the double the area of said land i.e lands bearing survey No. 144/5 to 144/10 situated at Village Pimpri Waghire, Taluka Haveli, District Pune surrender by Petition to Pimpri Chinchwad Municipal Corporation as per the provisions of its Development Control Rules.

3. The petitioner has challenged communication dated 27th September, 2007 addressed by respondent No.1 setting out therein that request of the petitioner for giving floor area ratio (for short 'FAR) cannot be acceded to on the ground that though the property is shown as “Gaathan” in a tenure, as the land is included in the non congested area in the sanctioned development plan, the petitioner can be given F.A.R admissible in respect of non congested area i.e 1 F.A.R.

4. Aggrieved by the order dated 25th July, 2011, the petitioner instituted Special Leave petition before the Apex Court. The Apex Court disposed of SLP on 4th January, 2012 by passing following order;

“After arguing for a while, learned counsel for the petitioner sought permission to withdraw this petition with liberty to file an appropriate review petition before the Division Bench of the High Court, so as to place other grounds which have not been taken by the petitioner in his writ petition”.

5. In support of this Review Petition, Mr. Sakhare invited our attention to the circular dated 3rd July, 1993 issued by the State Government as also Rule 2.18A of the Development Control Rules of Pimpri Chinchwad Municipal Corporation. He submitted that clause 2.18A is in two parts namely;

- (a) congested area relates to the existing congested area as shown on the plan with “Black Verge” and
- (2) existing Gaonthans of villages included in the Corporation limits.

He submitted that as far as the plot in question is concerned though it may not be included in the black verge area in the sanctioned development plan still it is included in Gaothan of Pimpri Waghare, and therefore, it falls in the congested area.

6. On the other hand, Mr. More invited our attention to the reply dated 21st March, 2017 filed by Mr. Prakash Thakur, Deputy Director of Town Planning & Development Department, Pimpri Chinchwad Municipal Corporation, first respondent and in particular paragraph 5 thereof. Paragraph 5 reads thus;

“I say that the land in question fall outside the “Gaothan & Congested Area” which can be very well ascertained by bare perusal of the Part Plan of the sanctioned development plan pertaining to the area wherein the said land situated. I say that in the sanctioned plan “Black Verge” area has been specifically earmarked and such areas are only entitled for the additional F.A.R as provided and contemplated under Development Control Regulation No. N. 2.4.5. I say that merely the classification of land in question as gaothan land by itself will not give rise to grant of F.A.R to the extent of 2. I say that by reasons of land in question being outside the “Black Verge” area, as indicated in the sanctioned DP, the petitioner is not entitled to double the FSI as prayed for”.

7. We have considered rival submissions advanced by learned Counsel for the parties. We have also perused the material on record. Regulation 2.18A reads thus;

“Congested area relates to the existing congested as shown bounded on the plan with “Black Verge” and existing gaonthans of villages included in the Corporation limits”.

A perusal of the above extracted provision clearly shows that congested area includes area which is bounded on the plan with black verge and also includes Gaothan of Village. In paragraph 5 of the affidavit extracted hereinabove, it is clearly stated that the land in question falls outside gaothan and congested area. In the present case, a perusal of the sanctioned plan shows that land of the petitioner is not in congested area. It falls in the non congested area. It is beyond the black verge.

8. In view thereof, we do not find that the petitioner has made out any case for reviewing order dated 25th July,2011. If the contention of Mr. Sakhare is accepted that congested area is divided into two parts, it will give rise to modifying the sanctioned development plan. In the case of **Pune Municipal Corporation and another Vs. Promoters and Builders Association and another, (2004) 10 Supreme Court cases 796**, the Apex Court has held that the powers under the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act') making of DCR or amendments thereof are legislative functions. Therefore, provisions of section 37 are to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. The same principle applies with all fours in respect of section 31 of the Act.

9. In the case of **Kamlesh Verma Vs. Mayawati, AIR 2013**

Supreme Court 3301, it is observed by the Apex Court as under :

“the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view”.

10. In view thereof, it is not possible to accept submission of Mr. Sakhare. The petitioner has not made out any ground for reviewing the order dated 25th July, 2011. Accordingly, Review Petition fails and the same is dismissed.

[R.G. KETKAR, J.]

[R.M. SAVANT, J.]